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THINKING OUTSIDE THE BOX

# EP&G NEVADA LAW PRIMER

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Robert has particular experience handling partnership disputes. He also participates in all aspects of real estate transactions and has experience handling substantial family law matters.

Robert is admitted to practice in Nevada, California, and Oregon and is a graduate of UCLA School of Law.

## **ONE-SIDED ATTORNEY'S FEES CLAUSES ARE ENFORCEABLE IN NEVADA**

Your contract is only as good as your bargaining power. When it comes to small and mid-sized businesses, often times the bargaining power lies with their large vendors, banks, and service providers.

These large companies typically require the use of their form contract and they are unwilling or unable to negotiate terms. These form contracts often include a clause awarding attorneys' fees incurred "to enforce the contract."

Many large vendors write this attorney's fees clause as one-sided, i.e., they get fees when they sue a customer and prevail, but the customer is not entitled to

attorney's fees even if the customer prevails.

In California (and in recognition of this disparity in bargaining power) a one-sided attorney's fees clause is, irrespective of its terms, enforced as though the attorney's fees clause were mutual.

### **PRACTICE AREAS**

- Business Disputes
- Real Estate
- Partnership Disputes
- Corporate and Securities
- Mergers and Acquisitions
- Family Law
- Fiduciary Litigation and Legal Malpractice
- Intellectual Property
- Employment Law
- Finance
- Aviation

This is accomplished by California Civil Code § 1717, which provides:



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“[W]here the contract specifically provides that attorney’s fees . . . which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the [prevailing party], whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney’s fees . . . .”

Thus, the California legislature protects the “little guy” from unfair and unreasonable contract terms.

Not so in Nevada. Being the pro-business jurisdiction that it is, the Nevada legislature has not stepped in to “level the playing field” and require courts to enforce one-sided attorney’s fees clauses as mutual.

Despite the lack of legislation on the subject, attorneys in Nevada have argued that such clauses should be read as mutual based

on various theories including implied contract terms, lack of mutuality of remedy, and strained readings of available attorney’s fees statutes. Such attempts have been rejected. (*See, e.g., Rowland v. Lepire*, 99 Nev. 308,315 (1983); *Trustees v. Better Building Co.*, 101 Nev. 742, 747; *Eagle SPE NV 1, Inc. v. Southern Highlands Dev. Corp.*, 2018 WL 1245494) (“Defendant’s proposed reading also runs counter to the general rule of contract interpretation – that the court should not construe contractual fees provision to have broader application.”)

Therefore, be careful not to sign a form contract in Nevada without a careful review for this common pitfall. While a small business or consumer may not have much bargaining power, where possible, attempt to negotiate a mutual attorney’s fees clause if there are

no acceptable alternatives to the vendor.

Nevada law does, however, provide other creative means to recover attorney’s fees. Consult a Nevada practitioner to guide you through them.

## ABOUT THE FIRM

Enenstein Pham & Glass is a result-oriented law firm that implements a creative approach to attain its clients’ objectives. Thinking outside the box brings results to otherwise difficult or hopeless situations. Whether at trial or in the boardroom, the Firm employs a multidisciplinary approach to complex situations to provide an effective resolution.

This Nevada Law Primer is provided for informational purposes only. It is not intended as legal advice and does not create an attorney-client relationship between Enenstein Pham & Glass and any recipients or readers.